IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 215 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MONAJ K. SHAH - Petitioner(s)
Versus
CRYSTAL WATCHES LTD. - Respondent(s)

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Appearance :
MR VIMAL M PATEL for Petitioner(s) : 1,
MR PAVAN S GODIAWALA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/05/2007
ORAL JUDGMENT

Present Company Petition has been filed by the petitioner under Sections 433 and 434 of the Companies Act, 1956 for an appropriate order

of winding up of the Company, Crystal Watches Ltd.,.

2. It is the contention on behalf of the petitioner that the petitioner has let out the premises at 407, Ashwamegh House 5, Smruti Kunj Society, Navrangpura, Ahmedabad and the respondent company is in possession of the said premises; that lease amount/rent to the extent of Rs. 2,68,800 is due and payable by the respondent; and inspite of repeated requests and demands the respondent Company has neglected and failed to pay the aforesaid amount to the petitioner. It is further submitted that as the said amount was not paid the petitioner was required to serve a statutory notice upon the respondent Company as required under Section 434 of the Companies Act, 1956 and inspite of the service of said statutory notice the respondent company has neglected and failed to make payment within 21 days and therefore statutory presumption can be raised that the respondent

company is unable to pay the debts. Therefore it is requested to allow the present Company Petition and to pass an appropriate order of winding up of the respondent company, Crystal Watches Ltd.

3. While admitting the present Company Petition, this Court passed a detailed order observing that the respondent Company had replied to the statutory notice in which the company has never disputed the amount payable. However, the only submission made was that they are facing financial crisis and as soon as the financial position improves the payment will be made. This Court also observed that the said reply was dated 31st March 2006 and more than one year has passed thereafter but the respondent Company has not paid any amount to the petitioner. This Court also observed that in the affidavit-in-reply filed in the present Company Petition also the claim is not disputed. After the admission, there is no changed circumstance. The admission

of the present Company Petition was directed to be advertised in two local newspapers, i.e., “The Indian Express” [English Daily] and “Sandesh” [Gujarati Daily] both Ahmedabad Editions and affidavit of advertisement dated 28th April 2007 is placed on record submitting that admission of the petition has been published in aforesaid two local newspapers. Inspite of the same, nobody has raised any objection against granting of relief in the Company Petition.

4. Considering the fact that the debt is not disputed and that an amount of Rs. 2,68,800 is due and payable, and inspite of service of statutory notice and thereafter the respondent company has failed and neglected to pay the said amount, the Company is required to be wound up. The respondent Company has also not come out with any concrete proposal to make payment of the dues. It is an admitted position that the respondent Company is not in position to pay any amount to the petitioner as on date. It is also

not the case on behalf of the respondent that the respondent company is a running and a profit-making company. Under the circumstances, the present Company Petition is required to be allowed. The respondent Company is, therefore, ordered to be wound up.

5. For the reasons as stated above, the petition is allowed. The respondent company is directed to be wound up. The Official Liquidator attached with this Court is appointed as 'Official Liquidator' for the respondent company. The Official Liquidator is hereby directed to take possession of the properties (movable or immovable) of the respondent company along with its Bank Accounts, Cheque Books, Cash, Account Books etc., after preparing the inventories and panchnama. The Official Liquidator shall submit his report within a period of three months. If required, he can take service of the Official Valuer for the purpose of preparation of

inventory report, possession note, etc. No costs.

[M.R. Shah, J.]

rmr.